

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BOBBY EUGENE LUCKY,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-04-1381-L
)	
OKLAHOMA COUNTY, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff filed this action on October 18, 2004, seeking damages along with declaratory and injunctive relief for alleged violations of the right to practice his religion while incarcerated. Plaintiff named as defendants Oklahoma County, Ron Ward, Director of Oklahoma Department of Corrections, and Lenora Jordan, Warden of the Oklahoma State Reformatory. On June 15, 2005, the court granted Oklahoma County's motion to dismiss. Thereafter, Ward and Jordan moved to dismiss plaintiff's claim for damages on the ground of Eleventh Amendment immunity. They sought dismissal of plaintiff's remaining claims for failure to exhaust his administrative remedies.

This matter is before the court for review of Report and Recommendation entered by the Honorable Robert E. Bacharach on October 18, 2005, in which he recommended granting defendants' motion to dismiss. In his timely filed objections, plaintiff does not address the Eleventh Amendment issue; rather, he appears to argue that he has, in fact, exhausted his administrative remedies or that defendants

did not process his grievances. In support of his exhaustion argument, plaintiff attached 19 exhibits to his objections. Exhibits 10, 12, 13, 14, 15, 16, 17, and 18 were all prepared after plaintiff filed this action. Therefore, they cannot constitute evidence of exhaustion as the Prison Litigation Reform Act requires administrative exhaustion *before* a claim is brought pursuant to section 1983. See 42 U.S.C. § 1997e (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”). The remaining exhibits do not cure the defects noted in the Report and Recommendation.

Judge Bacharach correctly determined that defendants Ward and Jordan are entitled to Eleventh Amendment immunity with respect to plaintiff’s claims for monetary damages. The court also concurs with Judge Bacharach’s thorough and cogent analysis of the exhaustion issue. Therefore, the court approves and adopts the Report and Recommendation in its entirety. Defendants’ Motion to Dismiss (Doc. No. 35) is GRANTED. This action is dismissed **without prejudice**. Judgment will issue accordingly.

It is so ordered this 26th day of January, 2006.


TIM LEONARD
United States District Judge